

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.3 of 1998 with Cross Objection No.153 of 1998, RFA No.8 of 1998, RFA No.10 of 1998, RFA No.14 of 1998 with C.O. No.151 of 1998 and RFA No.23 of 1998 with C.O. No.180 of 1998.

Reserved on:02.07.2007

Date of Decision:August 09, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?¹ No

<i>For the appellant</i>	<i>]</i>	
	<i>]</i>	<i>Please, see over-leaf:</i>
<i>For the respondents</i>	<i>]</i>	

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.3 of 1998 along with Cross Objection No.153 of 1998, RFA No.8 of 1998, RFA No.10 of 1998, RFA No.14 of 1998 with Cross Objection No.151 of 1998 and RFA No.23 of 1998 with Cross Objection No.180 of 1998, which have arisen out of LAC No.44/93, LAC No.67/93, LAC No.75/93, LAC No.48/93 and LAC No.71/93 respectively decided by common award dated 6.9.1997 passed by learned District Judge, Chamba. The parties are referred in the same manner as in the impugned award.

¹ ***Whether reporters of Local Papers are allowed to see the Judgment?*** Yes

2. The facts, in brief, are that State of Himachal Pradesh for acquiring land of the land owners for Chamera Dam reservoir in *Mohal Palehi* issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published on 13.6.1992. The Land Acquisition Collector (for short 'Collector') announced the award on 25.6.1993. The following are the details of land acquired and compensation awarded by the Collector as shown in Para-3 of the impugned award:-

Sr.No.	Case No.	Title of petition	Area of Land acquired	Amount of Compensation Awarded.
1.	44/93	Chain Singh v. NHPC etc.	2-3-8	45,812/-
2.	48/93	Ranjit Singh v. NHPC etc.	6-0-0	1,20,000/-
3.	67/93	Khainkho Ram v. NHPC etc.	0-13-8	13,290/-
4.	71/93	Bhola Ram v. NHPC etc.	8-7-0	1,59,755/-
5.	75/93	Gian Singh v. NHPC etc.	7-13-0	1,42,440/-

3. The Collector awarded compensation at different rates in respect of different kinds of land, such details are given in Para-4 of the impugned award. The land owners were not satisfied with the award, therefore, they made reference petitions under Section 18 of the Act to the Collector which were referred by the Collector to learned District Judge for adjudication. The petitions were consolidated vide order dated 13.6.1995 passed by learned District Judge in LAC No.44 of 1993. The learned District Judge decided all the reference petitions by impugned award and announced the compensation awarded to the petitioners.

National Hydro Electric Power Corporation (for short 'Corporation') has filed above appeals against the impugned award and prayed for setting aside the impugned award. The petitioners have filed cross objections in some of the appeals for enhancement of compensation.

4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the Corporation has submitted that learned District Judge has erred in relying sale deed dated 4.2.1988 Ext.P-13 for assessing the market value of the acquired land. He has submitted that small area measuring 2 Biswas was sold vide sale deed dated 4.2.1988 Ext.P-13 and this sale is otherwise not genuine. The sale deed Ext.R-1 dated 28.8.1993 has been wrongly ignored for assessing the market value of the acquired land. The learned counsel for the petitioners has submitted that learned District Judge has erred in allowing 65% deduction for assessing the market value of the acquired land on the basis of sale deed Ext.P-13, nothing has been awarded by learned District Judge for fruit and non fruit trees which were standing on the acquired land. He has submitted that petitioners are entitled to enhancement of compensation in their respective cross objections.

6. PW-1 Pawan Kumar, Camp Clerk, DFO, Chamba, has placed on record rates of non fruit trees fixed by the Government in the year 1992-93 vide copies Ext.P-1, Ext.P-2, Ext.P-3 and Ext.P-4. PW-2 Harish Kumar, Patwari, has placed on record one year average sale price of Mauza Palehi, copy Ext.P-5 and one year average sale price of Mauza Chaklu, copy Ext.P-6. PW-3, Milap Chand, Supervisor, Horticulture Chamera Project, has placed on record list of trees Ext.P-7,

Ext.P-8, Ext.P-9, Ext.P-10 and Ext.P-11 which were standing on the acquired land. The rates of fruit trees were as per 1966-67 H.P. Schedule of rates and of non fruit trees as per 1989-90 rates. PW-4 Gian Chand has stated that land of the petitioners was acquired along with standing trees for Chamera Project. On their land now there is a reservoir. He has placed on record Jamabandi Ext.P-12. He has stated that his land measuring 7 Bighas 18 Biswas has gone in reservoir whereas he has been given compensation for land measuring 7 Bighas 13 Biswas. Their lands were *Barani Awal Do fasli*. The average yield per Bigha from their land was 9/10 quintals maize, 7/8 quintals wheat and in addition to this they used to grow vegetables on the acquired land. The adjacent Mohals are Chaklu and Raj Nagar and the lands in Mauza Palehi were of better quality in comparison to lands in Mauza Raj Nagar and Chaklu. There were fruit and non fruit trees on their land. PW-5 Chaman Singh, Vice President, Gram Panchayat, Chaklu – Palehi has stated that he had seen the acquired land. Chaklu and Raj Nagar Mauzas are adjacent to Palehi but lands in Mauza Palehi are better than the lands in Mauza Chaklu and Raj Nagar. PW-6 Umar Deen has stated that he had sold 2 Biswas land to Suraiya Begum for a consideration of Rs.9000/- vide sale deed, copy Ext.P-13. The petitioners have tendered in evidence Jamabandi Ext.PX and respondent No.1 has tendered in evidence copy of mutation Ext.DX and sale deed dated 28.8.1993 Ext.R-1.

7. The sale deed dated 4.2.1988 Ext.P-13 is of Mauza Palehi and the acquired land is also situated in Mauza Palehi. The vendor Umar Deen of sale deed Ext.P-13 has been examined. The notification under Section 4 of the Act was published on 13.6.1992, thus, sale deed

Ext.P-13 was executed more than four years prior to the notification under Section 4 of the Act. It cannot be presumed that in order to enhance the market value of the acquired land the sale deed Ext.P-13 was executed between the parties. Therefore, sale deed Ext.P-13 is a bonafide sale.

8. Smt.Dumnu vide sale deed dated 28.8.1993 Ext.R-1 has sold 1 Bigha 9 Biswas 10 Biswansis land in Mauza Palehi to Jaswant Singh for a consideration of Rs.12,000/-. The sale deed Ext.R-1 was executed after publication of notification under Section 4 of the Act in the present case. The State had acquired large areas for Chamera Dam reservoir and for this purpose many notifications under Section 4 of the Act were issued from time to time. The possibility cannot be ruled out that because of Section 4 notifications there was fall in market value of land in the area due to fear of land going in proposed reservoir in Mohal Palehi. In these circumstances, the sale deed dated 28.8.1993 Ext.R-1 does not reflect actual market value of the land, rather it appears to be a distress sale keeping in view the acquisition of land for reservoir in that area. Moreover, vendor and vendee of sale deed Ext.R-1 were not examined in order to show that in fact this sale transaction was genuine and land covered by sale deed Ext.R-1 was comparable to the acquired land. The sale deed dated 28.8.1993 Ext.R-1, therefore, cannot be relied for assessing the market value of the acquired land.

9. The sale deed Ext.P-13 no doubt is of small area but the fact cannot be ignored that except for sale deed Ext.P-13 and sale deed Ext.R-1 the parties have not placed on record any other sale deed of Mauza Palehi executed prior to 13.6.1992 when the notification under

Section 4 of the Act was published. The sale deed Ext.R-1 cannot be relied for assessing the market value of the acquired land for the reasons stated above. Now, only sale deed Ext.P-13 is available on record for assessing the market value of the acquired land. There is no absolute bar to rely small area transaction for assessing the market value of large area. The small area transaction can be relied for assessing the market value of large area but in that situation appropriate deduction is to be made. In ***Ravinder Narain & Anr. Versus Union of India [2003 (4) SCC 481]***, the Hon'ble Supreme Court in Para-7 has held as follows:

“It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices.”

10. The learned District Judge, in the impugned award, for assessing the market value of the acquired land has made 65% deduction from the value arrived at on the basis of sale deed Ext.P-13 and has assessed market value of acquired land at the rate of Rs.31,500 per Bigha of *Barani Awal* land as against the market value of Rs.20,000 per Bigha of *Barani Awal* assessed by Collector.

11. The learned counsel for the petitioners has submitted that after having assessed the market value of the acquired land on the basis of Ext.P-13 the learned District Judge should not have made

further deduction of 65% for assessing the market value of the acquired land. This submission has no force. In **Basavva (SMT) & Ors. Versus Spl. Land Acquisition Officer & Ors. [(1996) 9 SCC 640]**, the Hon'ble Supreme Court has held as follows:-

“... In **Vasundara Devi** case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex. P-10 were situated at far-flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e. 53+12%=65% in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal.”

The learned District Judge has, thus, rightly assessed the market value of the acquired land after making 65% deduction from the market value of the acquired land assessed on the basis of sale deed dated 4.2.1988 dated Ext.P-13. It appears the deduction has been made by the learned District Judge keeping in view the fact that sale deed Ext.P-13 is of 2 Biswas of land and the total acquired land of the petitioners was 24 Bighas 16 Biswas and 16 Biswansis. The learned District Judge has, thus, rightly assessed the market value of the acquired land on the basis of sale deed Ext.P-13 after allowing 65% deduction.

12. The submission of learned counsel for the petitioners that learned District Judge should have allowed uniform rate for acquired land has also no force. The Collector has assessed the market value of the acquired land keeping in view the quality of land. The acquired land

consists of big area and the acquisition is for reservoir. The petitioners have not independently proved that whole of the acquired land was having uniform potential value. The classification of acquired land for purposes of compensation by the Collector and the District Judge, thus, cannot be faulted.

13. The learned counsel for the petitioners has submitted that learned District Judge has awarded no compensation to the petitioners for fruit and non fruit trees which were standing on the acquired land, nor market value of such fruit and non fruit trees has been assessed by learned District Judge in the impugned award. In ***Collector LAC, Mandi versus Karam Singh and Others [Latest HLJ 2000 (HP) 694]***, a Division Bench of this Court has held that compensation for land and fruit trees can be assessed separately.

14. In the present case, the comparable sales method was adopted for assessing the market value of the acquired land. The petitioners except for producing list of trees standing on the acquired land have not produced any other material on record to assess the market value of the acquired land with trees separately. The petitioners were satisfied with the comparable sales method for assessing the market value of the acquired land with trees. There is no clinching evidence on record to assess the market value of the trees separately at the time of publication of notification under Section 4 of the Act. The petitioners before the learned District Judge did not press for separate assessment of trees which were standing on the acquired land and that is why there is no reference in the impugned award to this effect. In the cross objections, it is not the case of the petitioners that they pressed for

assessment of market value of acquired land and trees separately before learned District Judge but despite that learned District Judge did not consider their case for separate assessment of trees. In these circumstances, it is reasonable to infer that petitioners had given up, abandoned before learned District Judge separate assessment of trees which were standing on the acquired land. Once they have given up, abandoned separate assessment of trees standing on the acquired land in reference petitions they cannot now put such claim in the appeal. In ***Dr.Mahesh Chand Sharma Versus Smt.Raj Kumari Sharma & Others [AIR 1996 SC 869]***, it has been held that a party who abandons a particular plea at a particular stage cannot be allowed to re-agitate in the appeal. Therefore, the petitioners cannot be permitted to put forward claim for fruit and non fruit trees standing on the acquired land by way of cross objections. The petitioners are not entitled to enhancement of compensation for fruit and non fruit trees separately.

15. The petitioners in the cross objections have raised grievance of awarding less compensation for alleged structures standing on the acquired land. The perusal of impugned award would show that only in RFA No.3 of 1998, which has arisen out of LAC No.44 of 1993 there was house on a portion of the acquired land and in no other case any structure was standing on the acquired land. No evidence has been led regarding the market value of house standing on a portion of acquired land at the time of notification under Section 4 of the Act in LAC No.44 of 1993, therefore, the petitioners in RFA No.3 of 1998 are not entitled to enhancement of compensation with regard to the house standing on a part of the acquired land.

16. The result of above discussion is that RFA No.3 of 1998 along with Cross Objection No.153 of 1998, RFA No.8 of 1998, RFA No.10 of 1998, RFA No.14 of 1998 with Cross Objection No.151 of 1998 and RFA No.23 of 1998 with Cross Objection No.180 of 1998 are dismissed. No costs.

August 09, 2007
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(Kuldip Singh), J.

1. **RFA No.3 of 1998 with Cross Objection No.153 of 1998::**

National Hydro Electric Power Corp. ...Appellant.

Versus

Chain Singh & Ors. ..Respondents.

For the appellant: Mr.Rajnish Maniktala, Advocate.

For the respondents: Mr.Jagan Nath vice Mr.Anand Sharma,
Advocate, for respondent No.1.

Mr.M.S.Chandel, Advocate General with
Mr.M.L.Chauhan, Addl.A.G., for respondents
No.2 and 3.

2. **RFA No.8 of 1998:**

National Hydro Electric Power Corp. ...Appellant.

Versus

Khainko Ram & Ors. ..Respondents.

For the appellant: Mr.Rajnish Maniktala, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General with
Mr.M.L.Chauhan, Addl.A.G., for respondents
No.5 and 6.

3. **RFA No.10 of 1998:**

National Hydro Electric Power Corp. ...Appellant.

Versus

Gian Singh & Ors. ...Respondents.

For the appellant: Mr.Rajnish Maniktala, Advocate.

For the respondents: Mr.Jagan Nath vice Mr.Anand Sharma,
Advocate, for respondents No.1, 3, 7, 8 and 10.

Mr.M.S.Chandel, Advocate General with
Mr.M.L.Chauhan, Addl.A.G., for respondents
No.14 and 15.

4. **RFA No.14 of 1998 with Cross Objection No.151 of 1998::**

National Hydro Electric Power Corp. ...Appellant.

Versus

Ranjit Singh & Ors. ...Respondents.

For the appellant: Mr.Rajnish Maniktala, Advocate.

For the respondents: Mr.Jagan Nath vice Mr.Anand Sharma,
Advocate, for respondents No.1 to 5.

Mr.M.S.Chandel, Advocate General with
Mr.M.L.Chauhan, Addl.A.G., for
respondents No.6 and 7.

5. **RFA No.23 of 1998 with Cross Objection No.180 of 1998:**

National Hydro Electric Power Corp. ...Appellant.

Versus

Bhola Ram & Ors. ...Respondents.

For the appellant: Mr.Rajnish Maniktala, Advocate.

For the respondents: Mr.Jagan Nath vice Mr.Anand Sharma,
Advocate, for respondents No.1, 2, 3, 5, 9, 10
and 11.

Mr.M.S.Chandel, Advocate General with
Mr.M.L.Chauhan, Addl.A.G., for respondents
No.12 and 13.
